UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BARBARA A. ARCHER,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 01-181-P-H***
	)	
JO ANNE B. BARNHART,	***)***	
Commissioner of Social Security,	***)***	
	)	
Defendant	***)***	

REPORT AND RECOMMENDED DECISION[1]

This Social Security Disability ("SSD") appeal raises the questions whether the administrative law judge failed to give adequate weight to the opinion of a treating physician, whether the administrative law judge was required to contact the claimant's treating physician under the circumstances of this case and whether there is sufficient evidence in the record to support the commissioner's determination that the claimant is capable of returning to her past relevant work. All of the plaintiff's assertions of error concern the condition of her left arm after surgery in 1990. Because the plaintiff had acquired sufficient quarters of coverage to be insured under the Social Security Act only through June 30, 1996 she was required to demonstrate that she was disabled on or before that date. I recommend that the court affirm the commissioner's decision.

[1] This action is properly brought under 42 U.S.C. § 405(g). The commissioner has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the commissioner's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on March 21, 2002, pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

In accordance with the commissioner's sequential evaluation process, 20 C.F.R. § 404.1520; *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5, 6 (1st Cir. 1982), the administrative law judge found, in relevant part, that the plaintiff met the disability insured status requirements of the Social Security Act on January 1, 1994, the date she stated she became unable to work, and had acquired sufficient quarters of coverage to remain insured only through June 30, 1996, Finding 1, Record at 19; that she had not engaged in substantial gainful activity since January 1, 1994, Finding 2, *id*.; that the medical evidence established that she had status post-tonsillectomy and radical neck dissection for carcinoma of the left tonsil, an impairment that was severe but did not meet or equal the criteria of any of the impairments listed in Appendix 1 to Subpart P, 20 C.F.R. Part 404 (the "Listings"), Finding 3, *id*. at 19-20; that her statements concerning her impairments and their impact on her ability to work on and before June 30, 1996 were not entirely credible in light of the degree of medical treatment required and the reports of her treating practitioners, Finding 4, *id*. at 20; that she retained the residual functional capacity to perform light work, although her capacity to perform the full range of light work was reduced by limitations in performing overhead reaching with her left arm, working around hazardous machinery, climbing ladders, ropes or scaffolds and kneeling and crawling, Finding 5, *id*.; that her past relevant work as a secretary did not require the performance of work functions precluded by her medically determinable impairments, and that her impairments accordingly did not prevent her from performing her past relevant work, Findings 6-7, *id*.; and that, therefore, she was not under a disability as defined in the Social Security Act at the relevant time, Finding 8, *id.* The Appeals Council declined to review the decision, *id*. at 4-5, making it the final decision of the commissioner, 20 C.F.R. § 404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. § 405(g); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The administrative law judge reached Step 4 of the sequential evaluation process, at which stage the plaintiff bears the burden of proof to demonstrate inability to return to past relevant work. 20 C.F.R. § 404.1520(e); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987). At this step the commissioner must make findings concerning the plaintiff's residual functional capacity and the physical and mental demands of past work and determine whether the plaintiff's residual functional capacity would permit performance of that work. 20 C.F.R. § 404.1520(e); Social Security Ruling 82-62, reprinted in *West's Social Security Reporting Service* Rulings 1975-82, at 813.

Discussion

The plaintiff relies, Itemized Statement of Errors Pursuant to Local Rule 16.3, etc. ("Itemized Statement") (Docket No. 3), on the August 2000 statements of Peter J. Haughwout, M.D., who performed her 1990 surgery that "[a]s a result of the radical neck dissection, she has been unable to lift and extend her left arm," "[s]he would have to forego lifting or carrying anything weighing twenty lbs. or more," and "[s]he also has had difficulty reaching or handling with her left arm since surgery," Record at 231. The administrative law judge found that Dr. Haughwort's statements were "neither internally consistent nor consistent with 'other substantial evidence in the case record,' because he had stated in February 1991 that the plaintiff was not disabled from performing her normal occupation or any occupation, he saw her only for a sore throat between June 30, 1993 and May 28, 1999, he stated

in May and again in September 1999 only that her limitation would be lifting and carrying moderately heavy objects, and the plaintiff saw another physician numerous times during this period and did not report problems with her left arm. Record at 17. Contrary to the plaintiff's argument, this analysis by the administrative law judge does not fail to follow the requirements of 20 C.F.R. § 404.1527(d)(2), which states that a treating physician's opinion will be given controlling weight if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. The administrative law judge's opinion adequately states the reasons why Dr. Haughwort's August 2000 opinion was not given controlling weight. Dr. Haughwort's opinion was not totally rejected by the administrative law judge, as demonstrated by his finding that she could not reach overhead with her left arm. Finding 5, Record at 20. Nor does this portion of the opinion fail to comply with Social Security Ruling 96-5p, as contended by the plaintiff. Itemized Statement at 2. That Ruling deals with the appropriate treatment of a treating professional's opinion on an issue reserved to the commissioner; no such issue is implicated by Dr. Haughwort's August 2000 letter. If the plaintiff meant to cite Social Security Ruling 96-2p, which expands on 20 C.F.R. § 404.1527(d)(2), no violation of the requirements of that Ruling is apparent in the opinion for the reasons already stated.

The plaintiff takes the position that Dr. Haughwort's statements concerning limitations on her ability to reach and handle objects with her left arm necessarily provides medical evidence to support her statements that she is unable to type or use the computer due to the problem with her left arm, activities which constituted 90% of her past relevant work. Record at 32, 50, 85, 104. Such a connection may not reasonably be inferred. For example, the Dictionary of Occupational Titles list "fingering" as a physical demand of secretarial work that is separate from reaching and handling. *E.g.,* Dictionary of Occupational Titles (U.S. Dep't of Labor, 4th ed. Rev. 1991) §§ 169.167-014

(administrative secretary); 201.362-030 (secretary); 203.362-010 (clerk-typist); 203.582-066 (typist). The administrative law judge's implicit rejection of this portion of Dr. Haughwort's statement is based on his observations that it is inconsistent with Dr. Haughwort's earliest evaluation of the plaintiff's capabilities after the surgery and that she did not report problems with her arm to the physician who was actually treating her during the relevant period of time, between the alleged date of onset of disability and the date last insured. The administrative law judge is entitled to weigh the evidence in this manner. He discounts the plaintiff's testimony concerning her attempts to work during the relevant period "in light of the degree of medical treatment required, and the reports of her treating practitioners." *Id*. at 18. Dr. Haughwort's later statements support her testimony, but those statements are inconsistent with his earlier statement that she could return to her secretarial work. *Id*. at 202. The administrative law judge may reject medical opinion that is unsupported or internally inconsistent.

Counsel for the plaintiff suggested at oral argument that the limitations in overhead reaching with the left arm found by the administrative law judge, Finding 5, Record at 20, precluded secretarial work, but none of the secretarial entries in the Dictionary of Occupational Titles includes overhead reaching as a physical requirement, and the plaintiff offered no authority in support of this argument. Counsel for the commissioner conceded at oral argument that secretarial jobs are commonly described in the DOT as requiring reaching and handling one-third to two-thirds of the time. Even if a limitation on such activities only in one arm were sufficient to preclude secretarial work under these circumstances, an issue I need not resolve, I have already indicated that there is sufficient evidence in the record to support the administrative law judge's implied rejection of Dr. Haughwort's statements concerning such limitations.

The plaintiff next contends that Ruling 96-5p required the administrative law judge to contact Dr. Haughwort under the circumstances of this case, apparently because he found that Dr. Haughwort's

opinion "on any issue reserved to the Commissioner" was not supported by the evidence and he could not ascertain the basis of the opinion from the record. Itemized Statement at 4. None of the statements of Dr. Haughwort upon which the plaintiff relies express opinions on any issue reserved to the commissioner, and accordingly this requirement of Ruling 96-5p is not applicable. Even if that were not the case, the basis of Dr. Haughwort's opinion is clearly the plaintiff's reports to him of her symptoms, and for that reason as well the Ruling does not apply.

Finally, the plaintiff contends that the administrative law judge failed to comply with Social Security Ruling 82-62 by "failing to make any findings as to the physical and mental demands of Plaintiff's past work." Itemized Statement at 5. The ruling at issue actually requires documentation in the record of "those work demands which have a bearing on the medically established limitations," Social Security Ruling 82-62, reprinted in *West's Social Security Reporting Service* Rulings 1975-82, at 812, not necessarily an explication of that information in the administrative law judge's written opinion. In this case, the plaintiff herself provided sufficient descriptions of the demands of her work as a secretary, the general nature of which is in any event commonly known. *See, e.g.*, Record at 50, 55-56, 85, 91, 100-02, 104. The plaintiff is not entitled to relief on this basis.

Conclusion

For the foregoing reasons, I recommend that the commissioner's decision be **AFFIRMED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 25th day of March, 2002.

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David M. Cohen
United States Magistrate Judge

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